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Long-Allot.
SACRAMENTO
101891-16,
P H M

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OCT 28 1916

Mr. J. J. Terrell,
Special Commissioner, Indian Service,
General Delivery, Sacramento, Calif.

My dear Mr. Terrell:

The Office incloses herewith for your information
carbon copies of correspondence dated October 21 and
October 23, 1916, requesting the institution of separate
suit in the United States District Court for the Southern
District of California to protect the interests of the
El Tejon Indians.

Very truly yours,

(Signed) C. F. Hauke

Chief Clerk.

HB-10-27

Land-Allotments
L-388-1914
101367-1916
P B M

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FOR FILE

Return to Indian Office.

DEAR MR. ATTORNEY GENERAL:

I have the honor to transmit herewith a communication with enclosures received from the Office of Indian Affairs requesting the institution of a separate suit in the United States District Court for the Southern District of California to protect the interests of the El Tujon Indians in their homes located in Kern County, California.

Your attention is invited to the suggestion of the Indian Office that if possible, Mr. John P. Truesdell be detailed to the case by reason of its importance and the inability of the Assistant United States Attorney to give it sufficient time and attention.

I also invite your attention to a statement made in the enclosed letter from the Indian Office relative to a similar case in the matter of two suits filed by the California Water Company of San Joaquin, California, to quiet title out of 600 Indians from the Shoshone Reservation, California.

Cordially yours,

(Signed) Bo Sweeney

Assistant Secretary.

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Enclosure 17256

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Lands-allotments
36555-1914
161307-1916
P. J. M.

Ranch: El Tejon.

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The Honorable,

The Secretary of the Interior.

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Sir:

The Office has the honor to submit the following statement of facts relative to the El Tejon Indians, with a view to having the Department of Justice take whatever action may be deemed advisable for the protection of their interests.

These Indians, now 70 in number, live near Bakersfield in Kern County, California, on lands which, if surveyed, would probably be described as Secs. 10, T. 11 N., R. 17 W. Here they have erected a chapel and placed small areas under cultivation. They maintain tribal relations and the record evidences a continued occupancy of these lands for at least 100 years.

The land occupied is a part of the El Tejon Ranch which comprises over 8,000 acres originally confirmed to Jose Antonio Aguirre and Ignacio del Valle, by the California Land Commission on May 6, 1855, under the act of March 3, 1851 (9 Stat. L., 631). This claim was also confirmed on appeal by the District Court of the United States for the Southern

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Return to Indian Office

District of California on March 19, 1889. A further appeal to the Supreme Court of the United States was dismissed in December, 1889, and the grant was patented to the confirmation on May 9, 1893, without any reservations as to the occupancy of any of the lands by the Indians, except in so far as section 15 of the act of March 3, 1881, *supra*, may be so construed. Section 15 provides that the confirmation shall be conclusive as between the United States and the claimants but shall not affect the interests of third persons.

This Ranch subsequently passed into the hands of John Deale and later to his son, both of whom, according to the record, "allowed the belief to be current that the Indians had a right of possession." During the ownership of John Deale and his son, apparently no complaints were made by the Indians, who were unchallenged.

In 1910 or 1911 the Ranch became the property of the Topjes Ranch Co., a Los Angeles syndicate, with the organization of which the Office is not familiar, other than that Mr. Wils and Harry Chandler, a member of the Board of Control, are interested therein. The land was reported in 1914 to be unoccupied in the name of R. P. Elliott.

During the early part of 1916 the Office began to receive complaints relative to the treatment of these Indians by

(THE END)

the Syndicate. These reports have not only come from many citizens of Bakersfield but also from Special Commissioner Terrell who was sent there to investigate conditions, and as a result of these reports the Office is convinced that the present conditions of these Indians is unsatisfactory. Efforts have been made through Mr. Terrell to find a suitable place to remove these Indians, but with no success. This Office is under even date inquiring of the General Land Office relative to the status of certain alleged public lands in that vicinity. However, a former special agent reported after examination, that all public lands of any value in that neighborhood had been taken up and it is doubtful whether such lands can be found.

In this connection, it may be mentioned that on May 18, 1914, the Department reserved for these Indians temporarily all vacant lands (amounting to approximately 10,000 acres) in fractional townships 11 and 12 N., Ranges 14 and 15 W. Later, when it was reported that the ranch owners were favorably disposed toward the Indians and that there was no longer necessity for continuing the withdrawal, it was revoked by the Department May 31, 1915.

It seems that the Syndicate has been requiring the

Indians to enter into a lease, for a nominal rental, each year and also engage some of them in employment about the ranch. Several written and verbal assurances have been given by Mr. Chandler and Ranch Manager Innes that the Indians are not being exploited in any way. These assurances do not agree with the reports of Special Commissioner Terrell and the citizens of Bakersfield nor with the notices to quit which will be found in the record, addressed to the chief of these Indians, presumably for the reason that he refuses to enter into a lease. It further appears that a suit in ejectment has been begun by the Syndicate in the Justice Court at Palashaypt. Rev. D. J. Remond to whom the Indians applied for counsel some time ago has interested himself in their case and is preparing their defense without compensation.

In the case of *Lynne v. Alas* (74 Cal. 688), the Supreme Court of California held that the confirmation of a grant under the act of 1881, *supra*, together with the issuance of a patent by the United States, left the title in precisely the same status as it was at the time of the treaty of *Cosumelgo gicalgo* (9 Stat. L., 282). Subsequently, however, a similar case was decided in the Superior Court of the county of San Diego in the matter of the ejectment of certain Indians

from the Turner Spring Ranch (Harvey v. Parker - 126 U.S. 564), and it was held that these Indians might be ejected. The Superior Court of the state of California stated that the opinion in the case of BYRNE v. ALAS, *supra*, was no longer law. It was sustained in this opinion by the United States Supreme Court (151 U. S. 451).

The ratio decidendi of the "Yarners Ranch case" was that the Indians had abandoned their claim founded on the action of the Mexican Government, by not presenting it to the commission created under the act of 1861. However, later decisions of the United States Supreme Court have indicated a tendency to greater consideration of the rights of the Indian as wards of the Government, and if stress were laid upon the fact that the status of these Indians precludes a reasonable supposition that they had any intention whatsoever of abandoning their claim, the Office believes it quite possible that a different position might be taken by the Supreme Court in a similar case arising at this time.

The office has prepared the enclosed draft of a letter to the Attorney General requesting that steps be taken by the proper United States Attorney to protect the interests of these Indians to whatever rights they may have to their village home. It is suggested that even if the home of these

Indians might not be prepared for them in fee by this method, the Syndicate might at least be placed in a position where it would be willing to compromise the matter by a sale to the United States at a reasonable price of the lands occupied by the Indians. The Office has funds available from which such a purchase might be made, if it should be recommended by the Department of Justice.

Special Commissioner J. J. Terrell, General Delivery, Sacramento, and Superintendent Frank Virtue of the Tuolumne River School, which is the nearest school to the land in question, will be glad to render the United States Attorney whatever assistance lies in their power.

Respectfully,

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Assistant Commissioner.

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